HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

HON'BLE SRI JUSTICE D.APPA RAO

W.P.No.14218 of 2006

25-07-2006

Between:

Y.Ramesh Reddy

… Petitioner

and

The Government of Andhra Pradesh
Rep. by its Secretary,
Transport, Roads & Buildings (Tr.II) Dept.,
Department, Secretariat,
Hyderabad and another.

… Respondents

HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

HON'BLE SRI JUSTICE D.APPA RAO

ORDER: (Per Hon'ble Sri Justice J.Chelameswar)

A ritualistic challenge to an Ordinance 3 of 2006 is the issue in this writ petition. The petitioner claims in the affidavit filed in support of the writ petition that he had purchased a new vehicle – Tata Safari, with an intention to ply as Motor Cab by obtaining necessary permit. It appears that the said vehicle was temporarily registered as AP-02-TR/N-5830, but unfortunately, the date of temporary registration is not mentioned in the affidavit. The petitioner also claims that he paid the tax upto 30-06-2006. The petitioner further claims to have made an application before the second respondent seeking permission to ply the abovementioned vehicle as Motorcab. It appears that the second respondent granted such a permission. Thereafter, the petitioner filed an application before the second respondent to register the vehicle as Motorcab. The said application was returned by the second respondent through his endorsement R.No.3600/B1/06 dated 09-06-2006 directing the petitioner herein to re-submit the application duly paying balance tax of Rs.64,350/- as per the Ordinance 3 of 2006 dated 25-05-2006. Hence, the writ petition.

The Andhra Pradesh Motor Vehicles Taxation Act, 1963 (for short 'the Act') is sought to be amended by Ordinance 3 of 2006 of the State of Andhra Pradesh. Section 3 of the Act reads as follows:

> " **Levy of tax on Motor Vehicles:** (1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use, in a public place in the State.
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> (2) The notification issued under sub-section (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied:
>
> Provided that the rates of tax shall not exceed the maximum specified in Column (2) of the First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in Column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as

are fitted with non-pneumatic tyres.

Provided further that in the case of motor cycles (including motor scooters and cycles with or without attachment), invalid carriages, motor cars, and jeeps and other non-transport vehicles not exceeding 2,286 Kgs in unladen weight except omni buses and chassis of motor vehicles, the tax shall be levied at the rates specified in the Third Schedule.

Provided also that in respect of a chassis of a motor vehicle passing through this State, from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding seven days, the rate of tax shall be one-twentieth of the tax payable for a quarter.

Provided also that in respect of Motor Vehicles operated with Battery/compressed Natural Gas/Solar Energy, no tax shall be levied for a period of five years from the date to be notified."

Sub-section (1) of Section 3 of the Act authorises the Government to direct that the tax shall be levied on every motor vehicle used or kept for use in a public place in the State. The Government is required to issue such directions by publication in the Official Gazette. Sub-section (2) further stipulates that the notification contemplated in sub-section (1) shall specify the class of motor vehicles, the rates of taxes and the periods for which such tax is payable etc. The first proviso to sub-section (2) stipulates that the rate of taxes to be specified by the State by the notification contemplated under sub-section (1) shall not exceed the maximum specified in Column (2) of the First Schedule. The second proviso stipulates that the various categories of vehicles specified in the said proviso are liable to be taxed at the rates specified in the Third Schedule. The impugned provision of the Ordinance 3 of 2006 i.e. Section 2 of the Ordinance provides that for existing second proviso, sub-section (2) of Section 3 of the Act shall be substituted. In other words, the categories of vehicles, which are required to be taxed at the rates specified in the Third Schedule underwent a modification. We shall examine what exactly is the modification a little later. Section 5 of the Ordinance amended the heading of the Column (10) of the Third Schedule by substituting the original heading. The original heading of the Column-

10 reads as follows:

> "Omni bus with seating capacity between 8 in all & 10 in all and their chassis."

Now the Legislature by virtue of the Ordinance, amended the said heading and it is substituted as follows:

> "Omni buses with seating capacity between 8 in all and 10 in all and High End Motor Cabs of the cost of rupees three lakhs fifty thousands and above."

The change brought about in the Ordinance is that until the amendment, motor vehicles covered under sub-section (2) of Section 3 of the Act were sought to be taxed on the basis of description given in the Schedule depending upon the seating capacity or otherwise. By the amendment, the Legislature sought to include a new class of motor vehicles irrespective of the fact whether they answer the description of the existing classes of motor vehicles contemplated under the Act or not, and the Legislature thought it fit to impose the tax on a vehicle whose capital costs exceeds Rs.3,50,000/- and by virtue of amendment to Column–10 of Third Schedule, various rates of taxes for such vehicles are specified. For the sake of demonstration, we may state that for a new vehicle falling in the above category, the rate of tax is 9% of the cost of the vehicle. It is this amendment, which is challenged in the instant writ petition.

The learned counsel for the petitioner, Sri Arifulla, submitted that since the petitioner's vehicle is a vehicle with a seating capacity of seven in all, it falls within the definition of '*motorcab*' as defined under sub-section (25) of Section 2 of the Motor Vehicles Act, 1988. Therefore, he argued that either the proviso to sub-section (2) of Section 3 of the Act or the amended proviso, did not deal with motorcabs and therefore, the petitioner is not liable to pay the tax on the cost of the vehicle as per the amended Column – 10 of the Act. We regret we are unable to accept the submission for this reason; either

the original proviso or the amended proviso does not deal with motorcab. Both the provisos deal with various classes of motor vehicles, namely

(1) motor-cycles; (2) motor cars; (3) jeeps; (4) non-transport vehicles not exceeding 2,286 Kgs in unladen weight; (5) omnibuses with a seating capacity of 8 persons or more in all but not exceeding ten persons etc. However, under the proviso as it originally stood, omnibus and chassis of motor vehicles, which perhaps otherwise answer the description of non-transport vehicles not exceeding the specified weight therein were excluded from the operation of tax liability under the Third Schedule. By the amendment in the impugned Ordinance, the 'omnibus' with a specified seating capacity is sought to be taxed in accordance with the scheme of Third Schedule. The specifications of an 'omnibus' or the exclusion of 'motorcab' per se does not prevent the Legislature to subject a vehicle to taxation with reference to another parameter. The fact that the Legislature chose not to indicate the motor vehicle by virtue of the existing description does not divest the Legislature to deal with the subject altogether. The Legislature introduced new class of vehicles, which are required to be taxed in accordance with Third Schedule. This new class of vehicle is '*motorcab*' whose cost exceeds the limit specified in the amendment. Such vehicles form a class by themselves. Further, the authority of the State Legislature to tax the motor vehicle is not in question in this writ petition. It is the description of the vehicle that is challenged by the petitioner. The Legislature is absolutely competent to describe the objects it seeks to tax subject to constitutional limitations.

In the circumstances, we do not see any substance in the writ petition and the same is dismissed.

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J.CHELAMESWAR, J.

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D.APPA RAO, J.

25-07-2006

BSC